

David Powel, Gent. }
Elizabeth his Wife, } Appellants.

William Pleydwell, Esq. }
Robert Culpeper, } Respondents.

The APPELLANTS CASE.

They Appeal from the Dismission of their Bill in Chancery.

JOH N FLETCHER, Late of Dublin, Esq. being Owner and in Possession of several Lease-hold Houses and Lands in and about the City of Dublin, of a considerable yearly Value; and both he and his Wife Elizabeth having a very great kindness for the Appellant Elizabeth, who was her Niece and God-Daughter, and lived with them several years; he the said John Fletcher, by Writing under his Hand and Seal, dated the 4th of July, 1677. Did,

July 4th, 1677. Promise and Engage himself to give unto his said Niece the Appellant, so many Houses and Lands in and about the City of Dublin, as did at that time amount to the yearly Value of 60, or 70 Pounds Sterling; and the same to come to her or the Heirs of her Body, from and immediately after the Death of him the said John Fletcher and Elizabeth his Wife, if they Died and left no Child, otherwise the said Writing to be void. And he did thereby further promise to perfect such conveyance of the Premises unto the Appellant Elizabeth (at her Marriage, if it were desired,) as Council Learned in the Laws should advise.

January 1677. Which said Writing was all prepared and wrote by the said John Fletcher himself, and by him freely Sealed and Delivered in the Presence of the Respondent, Pleydwell, and Two more Subscribing Witnesses.

The Appellants Intermarried, and the Appellant David did accept of the said Deed or writing, as a farther and more valuable provision added to the Portion of his said Wife; and did before such Marriage, Article to settle a considerable Estate in Joynture upon her and their Issue, which he afterward Settled accordingly.

March 1695. John Fletcher died without Issue, before any further conveyance was executed of the said Premises; having made his will, and his said Wife Executrix, to whom he devised all his Estate both Real and Personal, and she enjoyed the same during her Life, and died in September, 1696, intestate, without Issue; whereupon one Timothy Woodroffe, Dr. of Physick, her Eldest Brother and Heir, got Administration to her, as next of Kin, and also took out Administration, *de bonis non*, of the said John Fletcher, by which Titles the said Lease-hold Estate in Dublin was by Law vested in him, Subject to the aforesaid Deed under which the Appellants claim.

September 1696. The said Timothy Woodroffe having often declared, That he ought in Justice to confirm the said Agreement of Fletcher, made the 4th of July, 1677. did in Pursuance, and for Confirmation thereof; and that the Appellant might receive such benefit and advantages thereby, as he was capable of assuring unto them, either by Vertue of the said Administration, or as Heir at Law, of the said Elizabeth, did by his Deed duly executed, reciting the same Deed of Agreement, Give and Grant all the Estate, late of the said John Fletcher, Deceased, in or near Dublin aforesaid, unto the Appellants, their Heirs, Executors, Administrators, and Assigns for ever.

April 6th, 1697. Notwithstanding the said Conveyance from Woodroffe, the Appellants could never reap any benefit from the said Deed or Writing made by the said John Fletcher in July 1677, by reason the Respondent Pleydwell (who got into Possession about two years before Fletcher's Death) set up a pretence, That he in Hillary Term, 1691, obtained a Judgment in the Court of Common-Pleas, in the Kingdom of Ireland against the said John Fletcher, upon a Bill Penal for 1665 l. and did afterwards take out an Execution thereupon, which was Executed, and that the said Lease-hold Houses and Lands in or near Dublin, were sold by the then Sheriffs of Dublin, unto the other Respondent Culpeper, in trust for the Respondent Pleydwell, for the consideration of 400 Pounds, and insisting that he was a Purchaser, under the Title aforesaid, and refusing to assign his Interest therein unto the Appellants.

The Appellants in Easter Term 1697, exhibited their Bill into the High Court of Chancery here in England, where the Respondent Pleydwell then lived, against the said Respondent, as well to compel an Account and Assignment of the said Premises, as also to set aside the said Judgment and Execution, the same being gained by fraud, and upon no valuable Considerations, and the Respondents by their Answer, set forth their Title to be as aforesaid.

In Opposition whereunto the Appellants have proved by several witnesses examined in the said Cause.

1. That Fletcher at the time of the Judgment given in 1691, having several Suits depending against him in the Kingdom of Ireland, and there being a particular Intimacy and Correspondence between him and the Respondent Pleydwell, he the said Fletcher confessed the said Judgment voluntarily to the Respondent Pleydwell, which was entred out of colour only to protect the said Estate from Creditors, as both Fletcher and Pleydwell himself have several times since owned and acknowledged.

2. And the Appellants have it further in proof, that supposing the said Judgment to be fairly obtained, yet at the time of such pretended Sale, the said Houses were really worth above 300 Pound more than they were Appraised at and Sold for, they being then 100 Pound per Annum, and are since improved 60 Pound per Annum more.

3. In case any thing was really due from Fletcher at the time of the said Judgment, yet the Appellants have proved that the same was afterwards brought into subsequent Accounts settled between Fletcher and the Respondent Pleydwell, and went towards making up of a certain Sum of 1100 Pound for which 1100 Pound, Fletcher Mortgaged a considerable Estate he had in Herefordshire to Pleydwell, and Pleydwell is now in Possession thereof, which is more than sufficient to Answer whatever was due from Fletcher, over and above the said Lease-hold Estate in Ireland. And at the same time of making such Mortgage, the Penal Bill for 1665 l. upon which the said Judgment was obtained, was delivered up and cancelled,

* Note. * The Respondent Pleydwell after this Suit was begun, writes to the Appellant very friendly, to send him a Copy of his Bill in Chancery, and says, If the Herefordshire Estate be sufficient, he had rather fetch 400 l. out of Woodroffe, than hinder the Appellant, and his Wife, and Children of any thing that belongs to them.

July 6th, 1702. Dismission. Notwithstanding which, the Right Honourable the Lord Keeper of the Great Seal of England, upon the hearing of the said Cause, on the 6th Day of July last, was pleased to dismiss the Appellants Bill.

In case the said Order of Dismission should stand, the Respondent Pleydwell (who is no way related to the said Fletcher, or any of his Family) will go away with the Estate in Ireland for nothing, and also have what ever Money is due to him, secured upon the other Estate in Herefordshire, and the Appellants will be deprived of the Provision intended them by the said Fletcher, although the Respondent himself is a Witness to the said Fletcher's Deed or Writing of the 4th of July, 1677, and therefore cannot pretend to be ignorant of the Appellants Right.

The Appellants have therefore Appealed from the said Decree or Order of Dismission to the Right Honourable, the Lords Spiritual and Temporal, and humbly hope the same shall be reversed; and that the Respondent shall be ordered to Assign the said Houses and Estate to the Appellant, or at least that the Appellant shall be let in to redeem his Incumbrances.

Si. Harcourt,
William Dobyns.